

Fraudulent behaviour

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We've all heard the stories. Someone sets up a business or company, entering into financial arrangements with third parties who are never paid. When the business fails, they declare bankruptcy leaving a trail of unpaid debts behind them... only to set up a new business and do it all over again. Josanne Cassar looks into the financial and legal issues of commercial fraud as well as the psychological profile of a typical fraudster

One cannot speak about commercial fraud in a vacuum; it has to be considered within the context of the economic climate in general.

Whoever is in business can affirm that one of the most difficult tasks in today's business environment is that of getting paid on time, says Josef Busuttil, Director General of the Malta Association of Credit Management.

"Defaults in payments cause cash flow problems to businesses and make profits even slimmer. Credit does not come for free. The supplier has to manage it appropriately and find money to fund it somehow – usually by means of an overdraft, for which interest has to be paid. All this is to the detriment of cash flow, profit and the well being of the economy at large."

Mr Busuttil points out that research and studies, conducted by various institutions, including the European Union, contend that as a result of defaults in commercial payment, heavy administrative and financial burdens are placed on businesses, particularly those that are small or medium in size.

In fact, a report issued by the European Union referred to late payment as the major cause of business insolvencies, threatening the survival of businesses and resulting in numerous job losses. The same report cited that differences between payment rules and practices constitute an obstacle to the proper functioning of the EU internal market by limiting commercial transactions between member states.

It is within this context, Mr Busuttil adds, that one must appreciate the serious implications of fraud.

"During last year, Maltese businesses were faced once again by malicious commercial fraud. Some fraudsters are opening new companies with the minimum requirements that our law permits; they register for a VAT number and trade on credit.

Once their debts reach substantial amounts, they declare their companies bankrupt, leaving a trail of debts behind them. This money is difficult to recoup by their suppliers – the honest businesses – as these malicious people do not have any assets in their names. That's not all. Some of these people move into other industries, open new companies with totally different names, register for new VAT numbers and start trading fraudulently again."

In fact, this practice has become so prevalent in the media that the Institute of Maltese

Journalists (IGM) is even compiling a blacklist targeting individuals or companies that have failed to pay journalists for their work.

Understandably, it is difficult for honest business people to comprehend the mindset and sheer gall of those who swindle others in this way. What is even more disturbing is that it seems relatively easy to do.

“Although we do have legislation for companies and a competent Registry of Companies, it is not always easy to prohibit a person from being a company director,” Mr Busuttil says.

Nevertheless, he continues, this type of fraud could easily be minimised if the creditors conduct adequate research on their prospective clients in terms of credit worthiness. But the honest creditors require information, which unfortunately, is not always available and forthcoming.”

So how do the same people continue to get away with committing commercial fraud?

According to Mr Busuttil, “some companies are not filing their accounts and although the Registrar of Companies is fining these companies for such default, the latter are still opting not to declare their financial data publicly as legally required and are allowed to continue trading.”

There is something that creditors can do however. The Malta Association of Credit Management (MACM) urges creditors to be more careful when they receive requests for credit from these defaulting companies.

Mr Busuttil also feels that the time has come to be more stringent with companies. “The MACM pleads with the authorities to abolish thresholds that allow companies to file abridged accounts. MACM even opposes the idea that smaller companies need not to file accounts. We believe that besides the fact that a healthy economy needs financial transparency, these regulations do not make any commercial sense and may be causing harm to the business community rather than minimising bureaucracy. We argue that you can only abbreviate something if you have the full version as a starting point. Therefore, companies can only abbreviate their accounts if they produce their full set of accounts. Hence, it follows that producing abridged accounts adds to administration rather than detracting from it.”

On their part, Mr Busuttil argues, it makes sense for small businesses to produce their accounts on a monthly basis in order to make sure that they are in line with their targets and forecasts so that appropriate action can be taken in case of any variances. Ultimately, he points out, if the smaller companies are exempted from producing a full set of their annual accounts, the wrong business practice message may be transmitted to these companies and this is to their detriment. “Producing financial data is critical to every business,” he adds.

The ease with which anyone can apply for a VAT number also needs to be looked into.

MACM suggests that before a person applies for a new VAT number, be it as a company or as a self-employed, the person/director registering for the VAT number should satisfy some competency requirements in terms of business management.

“A short course addressing the basic business management issues may be considered in order to make sure that the new entrepreneurs are adequately skilled to manage their businesses to the benefit of all the stakeholders – understanding the difference between revenue and profit, the importance of sound cash flow and long term profit, how to gain and sustain competitive advantage, managing staff, and the responsibilities of the company directors are a few of the critical issues for a new entrepreneur to be trained

on.”

Another precaution to minimise fraud is that before a new company is registered, the Registrar should be allowed to examine and evaluate the history of the applicant. “A new company will only be permitted if the director/s have clean records. This may also apply when an individual applies for a new VAT number.”

Mr Busuttill continues that a company’s sales team is another effective source of market information. “The sales team is out in the field and therefore, it can sense what is happening. Sales people exchange information with their peers employed with other organisations in the same industry and this is valuable knowledge for any company.”

Finally, Mr Busuttill concludes that by forming part of a credit circle, such as MACM, also helps, as factual credit information is exchanged between members. Studies maintain that business organisations that are involved in credit circles are more credit knowledgeable, act proactively and take better informed credit decisions. “In this way, any business can secure a sound cash flow and ensure long-term profit, while minimising commercial fraud.”

The con artist: A psychological profile

Dottor Edward Curmi, a registered clinical psychologist and psychotherapist, explains what can make someone turn to fraud

What kind of personality traits are found in people who swindle others like this? Are they pathological liars, or do they live in denial, simply living in a fantasy in which they always dream that they will “strike it rich”?

“One cannot state that all people who swindle others have particular personality traits as they vary depending on the nature of the event. However, most con artists tend to be extremely intelligent and from a psychological perspective come from dysfunctional families

From a pathological perspective, most people who deceive others have strong traits of anti-social, narcissistic and borderline personality disorders. Also, there is research showing us that at times there could be an underlying addictive nature or a mood disorder such as mania or depression that could possibly explain such a nature.

Con artists do not necessarily commit such devious acts to gain on a financial level. At times, such deviant behaviour reflects a much more complex underlying motive.”

Are they aware of what they are doing, i.e. is it a conscious decision to defraud others of their money by not paying them? Do they ever feel guilty about what they are doing?

“Obviously this usually depends on whether the person has enough insight into what he/she is doing. On the one hand, in cases where a person might be suffering from a form of mania there could possibly be very little insight. On the other hand, most con artists are very much aware of what they are doing and have no sense of guilt or shame. Actually, at times they are clever enough to make their victims carry their own guilt and shame.”

Most people would feel mortified at owing so much money, and would even find it difficult to face those to whom they owe money, but I know of cases where there is absolutely no sense of shame...how can this be explained?

"This behaviour most of the times is due to their narcissistic nature. They are often too self-absorbed and almost thrive off seeing others suffer because of their actions. Usually such deviant behaviour reflects a person with no sense of boundaries and who has had experiences in childhood full of suffering and feeling let down by people."

Do these types of "con artists" ever learn to face reality or will they just keep defrauding others until they lose everything?

"Each case is unique. In my clinical practice, I have had con artists who kept on living off such behaviour whatever the punishment may have been. However, there have been a few success stories where the individual was able to understand how he/she possibly hurt others. In such cases empathy, compassion and a healthy conscience were the basis of such a change in character."

How can these people be helped? Is there anything close friends and family can do to stop the lying and scheming?

"One could possibly write a whole book on ways family members and friends could possibly deal with such individuals. First and foremost, anger, which is a very natural reaction, will never help such people change."

A non-judgemental nature and deep understanding of the problem are a necessity. Also, adequate long term professional therapy is a must."

Taking it to court

If you have been defrauded, you may initiate legal procedures in order to attempt recovery of what is owed, but as Dr Antonio Tufigno points out, it is not always easy to get your money back.

"It happens very frequently that people of ill will form new companies on a regular basis, for example once every two years, and run a number of small bills with a considerable number of different companies. They do so in order to discourage the creditor company from undertaking procedures against them, which procedures, if the creditor company wishes to attempt to 'lift' the limited liability protection of the persons concerned and have a go at finding them personally responsible, is rather cumbersome and difficult to obtain."

Suing the company, which is the usual method, is not always satisfactory, because, even though the law now provides for procedures whereby relatively small debts may be recovered even after just a time lapse following notification to receiving company of a judicial letter in court, obtaining an executive title in your favour (this being, for example, a court judgement) does not guarantee the repayment of the amounts due.

The best bet is, if you are still in time, in the sense that the debtor company does still actually operate through the banks, one may attempt filing a garnishee order (mandat ta' sekwestru) whereby the bank addressed will have to deposit in court any moneys belonging to the debtor, up to the value of the creditor's claim and relative expenses. If one manages to find some funds in that manner, there is a good possibility of obtaining some form of payment.

It is indeed easy to get away with it for those with wrong intentions, but prevention (assessing the potential debtor company and the reputation of the persons running it) and timely action (by resorting to judicial steps at the pertinent and not at too late a stage) may strongly diminish one's risks."

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